IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

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S.B. Civil Misc. Appeal No. 1114/2002

Hari Shanker

Versus

The State of Rajasthan & Ors.

Date of order :: August 14, 2007

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. Nitin Jain for the appellant
Mrs. Sadhna Bhatt, Addl. G.A. for the State

BY THE COURT:

1. Heard learned counsels.

2. This appeal is directed against the order dated 14.05.2002 passed by the learned ADJ, Jhalawar, whereby the learned ADJ has

remanded the case back to the learned trial court on the ground that there was no proper service of summons on the State and its authorities, namely the Executive Engineer, PWD, Jhalawar and the Assistant Engineer, PWD, Jhalawar and thus, there was no compliance with the provisions of Section 80(2) of the CPC as the application for waiver of that notice was not decided. Learned counsel for the appellant has relied upon the judgment of the Calcutta High Court in the case of ***Smt. Janak Raji Devi Vs. Chandrabati Devi & Anr.*** Reported in **AIR 2002 Calcutta 11** and submitted that no formal order as to waiver of notice under Section 80 is required once the suit is registered and it should be deemed that leave has been granted for maintaining the suit. Learned counsel further submits that the appeal filed by the State itself was barred by time as the same was filed on 15.10.1998 against the trial court's order and decree 03.04.1998.

3. Learned Addl. G.A. Submits that a perusal of the appellate order dated 14.05.2002 discloses that the summons in question were issued on 28.01.1998 for 29.01.1998 at about 3.00 p.m. and thus, there was no proper service of the notice on the defendants. Order 5 Rule 17 CPC requires that if the notices are refused, they should be served by a fixture on the address given. No such procedure was

adopted in the present case.

4. I have heard the learned counsels. A perusal of the impugned order discloses that there was no proper service of the summons on the defendants on dates given above it appears and even the proceedings for contempt for refusal of notice were initiated by the trial court against the State authorities. There was no proper order passed by the learned trial court waiving the service of the notices as required under Section 80 CPC.

5. In these circumstances, the impugned order passed by the appellate court remanding the case back for trial by the trial court cannot be faulted. The delay in filing the appeal should be deemed to have been condoned by the appellate court below. I find no force in this appeal and the same is accordingly, dismissed.

(Dr.VINEET KOTHARI),J.

Pramod
Item No. 35